

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 57632

Petitioner:

**TREE HOUSE CONDOMINIUM ASSOCIATION,
INC,**

v.

Respondent:

PROPERTY TAX ADMINISTRATOR.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 16, 2011, Debra A. Baumbach and Lyle D. Hansen presiding. Petitioner was represented by Steven F. Letofsky, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is protesting Respondent's denial of property tax exemption for tax years 2009 and 2010 for the subject property.

The Tree House Condominium complex was initially constructed in the 1970's. The original developer had reserved rights to build an additional 19 condominium units in that complex. Those development rights ultimately lapsed and were relinquished by that developer in 1981. As a result, all rights in the real property reverted to the existing condominium owners as a fractional common element.

In 2006, the Tree House Homeowners Association filed a declaration that authorized the transfer of the supplemental development rights to a third party. This transfer permitted the sale of those development rights to build the additional 19 condominium units in the fractional common element airspace. Petitioner purchased those development rights in 2008 at a sale price of over one million dollars.

At issue in this matter:

Whether the development rights that have been permanently and irrevocably severed from the fee simple interest become a taxable interest in real property and liable to being valued and assessed as a separate entity for ad valorem tax proposes?

The Board found Respondent's arguments persuasive.

The Board reached the conclusion that future development rights are taxable based upon the following definitions from Colorado State Statutes:

- 1.) "Taxable property" – all property, real and personal, not expressly exempt from taxation by law. Section 39-1-102 (16), C.R.S.
- 2.) "Real property" – includes all lands or interests in lands. Section 31-1-102(14), C.R.S. (emphasis added).

The Board was convinced from the evidence and testimony presented that:

- 1.) Development rights are not expressly exempted from taxation by law in the State of Colorado.
- 2.) Development rights are included in the definition of "real property" as an "interest in lands."
- 3.) The transfer of the development rights was recorded with the Summit County Clerk.
- 4.) The Petitioner testified that he paid over one million dollars for the development rights.

The Board concluded that the permanently and irrevocably severed development rights are a taxable interest in real property for ad valorem tax purposes.

ORDER:

The Petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

Section 39-2-117(6), C.R.S.

DATED and MAILED this 5th day of April, 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Lyle D. Hansen

Lyle D. Hansen

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Milla Crichton

Milla Crichton

